

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
AUGUST 2, 2010
7:02 P.M.**

ROLLCALL Answering rollcall were Members Bennett, Brindle, Housh, Swenson and Mayor Hovland.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Bennett and seconded by Member Brindle approving the Council consent agenda as amended, tabling the Minutes of the regular meeting of July 20, 2010 until the August 17, 2010 meeting.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION 2010-45 ADOPTED – BOYS HOCKEY TEAM COMMENDED Mayor Hovland read in full Resolution 2010-45 recognizing the Edina High School 2009-2010 boys' hockey team and coaches as 2010 State Champions. The Council and audience recognized the team with a round of applause and each was awarded with a certificate of commendation. **Member Housh introduced and moved adoption of Resolution No. 2010-45, Resolution of Commendation, Edina High School 2009-2010 boys' hockey team.** Member Brindle seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION 2010-46 ADOPTED – GIRLS TENNIS TEAM COMMENDED Mayor Hovland read in full Resolution 2010-46 recognizing the Edina High School 2009-2010 girls' tennis team and coaches as State Champions. The Council and audience recognized the team with a round of applause and each was awarded with a certificate of commendation. **Member Swenson introduced and moved adoption of Resolution No. 2010-46, Resolution of Commendation, Edina High School 2009-2010 girls' tennis team.** Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION 2010-47 ADOPTED – BOYS SWIMMING AND DIVING TEAM COMMENDED Mayor Hovland read in full Resolution 2010-45 recognizing the Edina High School 2009-2010 boy's swimming and diving team and coaches as 2010 State Champions. The Council and audience recognized the team with a round of applause and each was awarded with a certificate of commendation. **Member Swenson introduced and moved adoption of Resolution No. 2010-47, Resolution of Commendation, Edina High School 2009-2010 boys' swimming and diving team.** Member Brindle seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

2010 IMAGES OF EDINA PHOTO CONTEST AWARDED Communications Coordinator Doll described the Images of Edina photo contest, thanked the judges, and announced the following award winners: living-people category to Diane Schroeder for "Lake Ripples," living-plants/wildlife category to Connie Greiman for "Dragonfly," learning category to Sonja Ritchie Roy for "First Day of Kindergarten," raising families category to Paul Zdechlik for "Drinking Up Summer," doing business category to Cacky Wyatt-Bell for "Taking a Business Call," staff choice award to Dave Dettmann for "Joy," with the overall Best of Show going to Diane Schroeder for "Lake Ripples".

***MINUTES APPROVED – WORK SESSIONS OF JULY 20, 2010 – MINUTES TABLED
REGULAR SESSION OF JULY 20, 2010** Motion made by Member Bennett and seconded by

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Member Brindle approving the minutes of the work sessions of July 20, 2010, and tabling the regular session of July 20, 2010 until the August 17, 2010 meeting.

Motion carried on rollcall vote – five ayes.

PUBLIC HEARING HELD ON SIDEWALK CONSTRUCTION – RESOLUTION NO. 2010-65 ADOPTED Affidavits of Notice presented and ordered placed on file.

Assistant City Engineer Sullivan explained that Improvement No. S-106 was initiated by a resident petition and acknowledged that the August 2, 2010, report contained a counter petition signed by seven residents, one being an owner of an affected parcel. He presented a map identifying the locations of the petitioners and then presented Improvement No. S-106, Interlachen Boulevard sidewalk construction from Bedford Avenue to William Avenue. The estimated project cost was \$84,000. Municipal State Aid Funds (MSA) were proposed to be used to fund the project so there will be no special assessments. Mr. Sullivan stated staff had determined the project was cost effective and feasible.

The Council asked questions of Mr. Sullivan about the use of MSA funds and how projects were prioritized. Mr. Sullivan explained the City received about \$1 million of MSA each year, and while staff would prefer this was a longer segment of sidewalk, the petition was for one block and was consistent with the City's MSA plans. The Council discussed the alignment of the sidewalk, value of pedestrian pathway connectivity to the parks and library, and need for adequate separation from vehicle traffic within the City's right-of-way. With respect to the fence located in the right-of-way, it was indicated that staff would work with the property owner and look for ways to minimize impact to existing vegetation.

Mayor Hovland opened the public hearing at 7:38 p.m.

Public Testimony

Sandra Strom Wilson, 5313 Interlachen Boulevard, addressed the Council.

Joyce Repya, 5020 Bedford Avenue, addressed the Council.

Member Swenson made a motion, seconded by Member Brindle, to close the public hearing.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

The Council and staff addressed the issues raised during public testimony. The Council noted this was a landlocked area in need of sidewalk connections. Interest was expressed in further discussing the ability to preserve trees and fences by moving the sidewalk alignment, possibly lowering the project cost. Member Housh indicated he was not convinced this project was absolutely necessary and preferred to use MSA dollars to provide larger connectivity. The Council discussed its goal to create City-wide walkability and preserve landscaping as much as possible.

Member Swenson introduced and moved adoption of Resolution No. 2010-65, sidewalk construction for: Interlachen Boulevard from Bedford Avenue to William Avenue, Improvement No. S-106. Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Swenson, Hovland

Nays: Housh

Motion carried.

PUBLIC HEARING HELD ON SIDEWALK CONSTRUCTION – RESOLUTION NO. 2010-66 ADOPTED Affidavits of Notice presented and ordered placed on file.

Mr. Sullivan explained that Improvement No. S-104, Normandale Road and Valley View Road sidewalk construction was initiated by the City at the request of the Council when it was identified in the 2008 Comprehensive Plan update. The project area was east of Normandale Road, along the north side of Valley View Road, from Benton Avenue south to Concord Avenue. Mr. Sullivan presented the proposed project and rationale used to determine the sidewalk placement. The project was estimated to cost \$200,000 and would be funded from municipal state aid (MSA) funds without special assessments to property owners. Mr. Sullivan stated staff determined the project was cost effective and feasible and recommended approval. The Council noted the additional information received from residents during the last week.

Mayor Hovland opened the public hearing at 7:59 p.m.

Public Testimony

Peyton Robb, 4812 Valley View Road, addressed the Council.

William Manners, 4712 Valley View Road, addressed the Council.

Gardiner Van Ness, 4820 Valley View Road, addressed the Council.

Heidi Blackburn, 4716 Valley View Road, addressed the Council.

Cheryl Hogle, 4829 West 60th Street, addressed the Council.

Kathleen Mulrooney, 4809 Valley View Road, addressed the Council.

Ruth Schmoll, 6005 Concord Avenue, addressed the Council.

Ed Cracraft, 4717 Valley View Road, addressed the Council.

Brian Liddle, 4808 Valley View Road, addressed the Council.

James Wilson, 5313 Interlachen Boulevard, addressed the Council.

Member Swenson made a motion, seconded by Member Bennett, to close the public hearing.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

The Council and staff addressed the issues raised during public testimony. Mr. Houle read a section of City Code defining that right-of-way was public property and not to be landscaped or improved by private property owners. Attorney Knutson advised this was a common problem in communities, noting if someone chose to landscape the public right-of-way and a sidewalk project was planned, the City had the right to tell the landowner to remove the improvement at their own expense. Mr. Houle explained why the boulevard area was an important feature in that the boulevard provided stormwater treatment, snow storage and a buffer between vehicles and pedestrians. Staff advised that Valley View Road was the preferred sidewalk route because it was a state-aid route. The City could not guarantee replacement of trees that died on a reconstruction route, but the City Arborist would work with homeowners to lessen impact on trees. The Council agreed that the trees were a great asset to the City and concurred this project made good use of MSA dollars, providing important connectivity to schools, parks, and the community center.

Member Swenson introduced and moved adoption of Resolution No. 2010-66, sidewalk construction for: Normandale Road and Valley View Road from Benton Avenue to Concord Avenue, Improvement No. S-104. Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

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Motion carried.

PUBLIC HEARING HELD ON AMENDMENT TO CYPRESS EQUITIES FINAL DEVELOPMENT PLAN – RESOLUTION NO. 2010-67 ADOPTED Affidavits of Notice presented and ordered placed on file.

Interim City Manager Presentation

Interim City Manager Worthington presented the amendment to the final development plan for Cypress Equities at 7311 France Avenue. She reported the approval recommendation of the Planning Commission, including an amendment to the final development plan to allow outside sound amplification and revisions to the building elevation to include additional sliding glass doors/panels. It was noted that the changes to the building elevation met all zoning ordinance requirements. The proponent had withdrawn the request for a wood burning outdoor fireplace.

Proponent Presentation

Kirk Williams, representing Cypress Equities and Pinstripes, stated they were proceeding with construction and hiring plans and excited to open a business in Edina that was in keeping with the community and designed uniquely to assure the business would not infringe on the neighbors of Centennial Lakes. He presented their amendment for minor elevation revisions to include additional glass doors and outdoor sound amplification for music purposes. Mr. Williams requested clarification on the requirement to obtain a loudspeaker permit from the City. He indicated Cypress had been working diligently with City staff to validate that any music played on the outdoor patios or balconies would not be discernable from any location of Centennial Lakes. Mr. Williams indicated the revisions were wholly consistent with agreements made three years ago that noise would not intrude on neighboring properties or infringe on the enjoyment of their property. He requested the Council's approval to amend the final development plan as presented.

The Council asked questions of Mr. Williams and staff regarding the glass partitions and loudspeaker permit process. Mr. Williams explained the glass partitions will extend the outdoor season and further attenuate any sound from the patio to the lake. Attorney Knutson reviewed the Code section requiring an administrative loudspeaker permit that regulates the placement of outdoor speakers. City Clerk Mangen reviewed events when loudspeaker permits were issued and recommended permit annualization for Pinstripes.

The Council referenced meeting minutes from 2006 and 2007 related to previous approvals for this property and the conditions imposed on both the initial 2006 application and the as-built project approved in 2007, which included no outdoor sound amplification. Mr. Williams stated this was an impact-based decision because in 2006 Cypress planned a housing component in addition to three upscale restaurants that had not yet been identified. However, now the proposal was for one 32,000 square-foot Class A restaurant with Pinstripes. Mr. Williams assured the Council that the neighborhood on the east side of the lake would not hear music emanating from Pinstripes and if residents did, then outdoor amplification would cease. The Council noted that if the proponent violated the noise ordinance, it was clearly specified Pinstripes would be prohibited from having outdoor sound amplification; thus there was a mechanism for immediate correction if the permissible decibel levels were violated or the music could be heard by the neighbors.

The Council asked Pinstripes to address their intended hours of operation. Dale Schwartz, Pinstripes, responded that he planned that weekdays' last call would be at 11 p.m. with closing at 11:30 p.m., and weekend's last call would be at 12:30 a.m. with a closing time of 1:00 a.m. Mr. Schwartz asserted that staff had never addressed a loudspeaker permit, so at the Planning Commission meeting Pinstripes had proposed to guarantee that the noise would not be heard by any and all residents on the other side of the lake, irrespective of time. He indicated he had a problem with the 10:00 p.m. timeframe of the loudspeaker permit.

Mayor Hovland opened the public hearing at 9:14 p.m.

Public Testimony

John Bohan, 800 Coventry Place, addressed the Council.

Dana Lappin, 205 Coventry Court, addressed the Council.

Joellen Deever, 5250 Vernon Avenue S, addressed the Council.

Myra Starkenburg, 7440 Edinborough Way, Unit #4113, addressed the Council.

Natalia Sourova, 7400 Edinborough Way, Unit #5307, addressed the Council.

Member Housh made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

The Council and staff addressed the issues raised during public testimony. Attorney Knutson advised that all commercial businesses with amplified music were required to obtain a loudspeaker permit. The recommendation of the Planning Commission was to stop the use of outdoor loudspeakers at 10 p.m. so that restriction was specific to the Pinstripes application. The Council discussed the application and need to assure the use will be successful in the current economy. It also discussed the recommended conditions for approval that were subjectively worded with regard to the basis for complaint and its preference for tighter standards.

Dr. David Braslau, acoustical consultant for Pinstripes, stated measurements of ambient noise were taken from across the lake at 11 p.m. It was found to be at 53 dBA, indicating this was not a quiet area. Sound projections were also taken that determined the 65 dBA level. Dr. Braslau explained the intent of restaurant background music was to mask traffic noise and the conversations of other patrons. It was noted that Centennial Lakes had amplified music that was turned off one-half hour before sunset in warm weather and stayed on until 9:30 p.m. in winter weather. Dr. Braslau stated that was not an issue because the music on the walkway measured 55-60 dBA at 15 feet. The Council asked questions of Dr. Braslau regarding the circumstances under which you would be able to hear Pinstripes music on the other side of the lake. Dr. Braslau advised it would have to be a very quiet night, no traffic on I-494, with a breeze from the northwest.

The Council reviewed the June 30, 2010, Planning Commission minutes and listed conditions. It was noted there was a mechanism to require Pinstripes to turn off the outdoor amplified music and, in good faith, Pinstripes had agreed to do so. The level of protection provided was questioned, since prohibition required two or more occasions within a 90-day rolling period that were independently confirmed by a Police Officer or other City employee. The Council indicated support for the restrictive language that measured from the source of the speaker if a complaint was received. Attorney Knutson advised that it was the judgment of the Council whether hour restrictions were necessary for the outdoor amplification, but the 10 p.m. restriction was not part of the loudspeaker ordinance.

Member Housh introduced and moved adoption of Resolution No. 2010-67, approving an amended final development plan at 7311 France Avenue for Cypress Equities based on the following findings:

1. The proposal would meet the required standards and ordinances for a final development plan.
2. The sound study done by David Braslau Associates, Inc. concludes that a maximum sound level of 65 dBA (decibels) on the lower patio and upper triangular part of the upper deck and a 60 dBA from the upper deck would be acceptable for the site to meet State law and regarding noise.

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And subject to the following conditions:

1. Building must be developed per the building elevations date-stamped June 24, 2010, with the exception of the outdoor fire place, which was requested for removal from the plan by the applicant.
2. Outdoor amplification is allowed for building C, provided that decibel levels may not exceed State noise standards or be audible to residents on their property on the east side of Centennial Lake. If amplified sound exceeds State noise standards or is audible to residents on their property on the east side of Centennial Lake on two or more occasions within a 90-day rolling period and the incidents are independently confirmed by a Police Officer or other City employee, subsequent outdoor amplification will be prohibited.
3. From the source of the speaker, the maximum sound level may be 65 dBA (decibels) on the lower patio and upper triangular part of the upper deck and 60 dBA from the upper deck, to meet State law regarding noise at the adjacent residential lot line.
4. A loud speaker permit must be obtained from the City of Edina.
5. All other conditions required in Resolution 2007-63 would continue to be in effect, unless otherwise stated above.

Member Swenson seconded the motion.

The Council discussed the wording of Planning Commission's conditions from their June 30, 2010 meeting, and it was noted the proponent had indicated no objection to that wording. With regard to a revocation process, Attorney Knutson advised there would be a hearing before any revocation could occur. It was noted that Pinstripes had indicated that the music would be turned off if two valid complaints were received. The Council commended Kirk Williams and Dale Schwartz for their positive and respectful correspondence during this process.

Member Bennett reviewed the conditions prohibiting outdoor amplified music placed in 2006, and again in 2007 that were not challenged, and stated her disappointment that promises made to residents who sleep within 300 feet of this location had been broken.

Member Brindle offered a friendly amendment to Condition 4 to indicate "A loud speaker permit must be obtained from the City of Edina and meet all applicable conditions of the permit. Members Housh and Swenson declined the friendly amendment, noting Edina Code does not state a time that a loudspeaker permit must cease.

The Council acknowledged that in 2006 it thought this would be an iconic condominium with multiple restaurants but that did not occur due to a neighborhood lawsuit, which spoke to why there would have been no amplification of music. However, circumstances had changed and the Council had the right to reconsider the amplification issue.

Rollcall:

Ayes: Brindle, Housh, Swenson, Hovland

Nays: Bennett

Motion carried.

Member Swenson was excused from the meeting at 10:15 p.m.

RESOLUTION NO. 2010-63 ADOPTED – ACCEPTING VARIOUS DONATIONS Mayor Hovland explained that in order to comply with State Statutes; all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations. **Member Bennett introduced and moved adoption of Resolution No. 2010-63, accepting various donations.** Member Brindle seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Hovland

Motion carried.

***SHOPPES AT YORKDALE AMENDMENT TO RECIPROCAL AGREEMENT APPROVED**

Motion made by Member Bennett and seconded by Member Brindle to approve an amendment to the reciprocal easement agreement for Yorkdale Shoppes and the City of Edina at 6755 and 6775 York Avenue.

Motion carried on rollcall vote – five ayes.

ORDINANCE NO. 2010-11 ADOPTED – STUDENT MEMBERSHIP PROVISIONS TO BOARDS, COMMITTEES, AND COMMISSIONS AMENDED

The Council acknowledge input from Human Rights & Relations Commission (HRRRC) Chair Bigbee reiterating his strong concern that the HRRRC have an odd-numbered regular membership. **Member Housh made a motion, seconded by Member Bennett, to waive Second Reading adopting Ordinance No. 2010-11, amending the City Code concerning appointment of students to boards, commissions, and committees, revising subsection 140.04 to indicate: nine regular members and two student members.**

Ayes: Bennett, Brindle, Housh, Hovland

Motion carried.

RESOLUTION NO. 2010-68 ADOPTED – INTERIM CITY MANAGER SALARY SET

Mayor Hovland recommended increasing the compensation for the Interim City Manager by ten percent in consideration of her extended responsibilities. **Mayor Hovland introduced and moved adoption of Resolution No. 2010-68, establishing the salary for the Interim City Manager.**

Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Housh, Hovland

Motion carried.

AUTHORIZATION GRANTED TO APPLY FOR LOCAL GOVERNMENT RENEWABLE ENERGY GRANT PROGRAM

Ms. Worthington presented staff's recommendation to apply for a Local Government Renewable Energy Grant through the Department of Energy as proposed by the Energy and Environment Commission (EEC), noting it would achieve three renewable energy goals. The grant would require a City match of approximately \$18,000, which could be paid from contingency funds in the 2010 budget and would leverage approximately \$200,000 in grants.

Bill Sierks, Energy and Environment Commissioner, reviewed their efforts to access this opportunity that used one-time federal stimulus grant money available to municipalities and school districts that was made possible because Mr. Nelson's company was generously supplying matching materials. Greg Nelson, member of the EEC Working Group, described the 108 integral panels that would cover one-third of the City Hall roof and produce about 2% of the City Hall's energy.

The City Council discussed the life expectancy of this equipment and noted that energy savings would conservatively return the City's investment in roughly ten years. **Member Brindle made a motion, seconded by Member Bennett to authorize staff and the EEC members to apply for a Local Government Renewable Energy Grant.**

Ayes: Bennett, Brindle, Housh, Hovland

Motion carried.

COMMUNITY COMMENT

Garfield Clark, Garfield Clark Commercial, 1235 Yale Place, Minneapolis, requested the City's assistance to resolve an issue related to the number of SAC units charged to Club Kid, Inc. at its new leased location, 6747 York Avenue. Ms. Worthington explained that SAC fees were not a City fee, but a Metropolitan Council fee that the City collected on its behalf. The Council discussed the options available to facilitate the licensing of Club Kid, Inc. so the Metropolitan Council would reevaluate the number of SAC units to be charged. Ms. Worthington stated the City could accept an escrow payment, and she would work with Club Kid to try and resolve this matter.

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***CONFIRMATION OF CLAIMS PAID** Motion made by Member Bennett and seconded by Member Brindle approving payment of the following claims as shown in detail on the Check Register dated July 22, 2010, and consisting of 38 pages: General Fund \$498,016.46; Communications Fund \$17,831.02; Working Capital Fund \$4,122.01; Equipment Replacement Fund \$16,685.07; Art Center Fund \$22,951.23; Golf Dome Fund \$591.10; Aquatic Center Fund \$21,237.59; Golf Course Fund \$41,527.76; Ice Arena Fund \$14,740.86; Edinborough/Centennial Lakes Fund \$21,494.23; Liquor Fund \$199,489.01; Utility Fund \$72,070.24; Storm Sewer Fund \$3,770.20; PSTF Agency Fund \$3,007.36; **TOTAL \$937,534.14** and for approval of payment of claims dated July 29, 2010, and consisting of 27 pages: General Fund \$521,387.55; Communications Fund \$26,079.76; Police Special Revenue \$5,119.72; Working Capital Fund \$474,002.03; Art Center Fund \$4,076.57; Golf Dome Fund \$136.00; Aquatic Center Fund \$7,088.62; Golf Course Fund \$17,503.23; Ice Arena Fund \$7,316.75; Edinborough/Centennial Lakes Fund \$30,673.71; Liquor Fund \$128,111.51; Utility Fund \$157,684.87; Storm Sewer Fund \$129,324.03; Recycling Fund \$32.51; PSTF Agency Fund \$20,443.10; **TOTAL \$1,528,979.96.**

Motion carried on rollcall vote – five ayes.

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 10:50 p.m.

Respectfully submitted,

Debra A. Mangen, City Clerk

Minutes approved by Edina City Council, August 17, 2010.

James B. Hovland, Mayor

Video Copy of the August 2, 2010, meeting available.